

§ 61.62 Funding for disposal site closure and stabilization.

(a) The applicant shall provide assurance that sufficient funds will be available to carry out disposal site closure and stabilization, including: (1) Decontamination or dismantlement of land disposal facility structures; and (2) closure and stabilization of the disposal site so that following transfer of the disposal site to the site owner, the need for ongoing active maintenance is eliminated to the extent practicable and only minor custodial care, surveillance, and monitoring are required. These assurances shall be based on Commission-approved cost estimates reflecting the Commission-approved plan for disposal site closure and stabilization. The applicant's cost estimates must take into account total capital costs that would be incurred if an independent contractor were hired to perform the closure and stabilization work.

(b) In order to avoid unnecessary duplication and expense, the Commission will accept financial sureties that have been consolidated with earmarked financial or surety arrangements established to meet requirements of other Federal or State agencies and/or local governing bodies for such decontamination, closure and stabilization. The Commission will accept this arrangement only if they are considered adequate to satisfy these requirements and that the portion of the surety which covers the closure of the disposal site is clearly identified and committed for use in accomplishing these activities.

(c) The licensee's surety mechanism will be annually reviewed by the Commission to assure that sufficient funds are available for completion of the closure plan, assuming that the work has to be performed by an independent contractor.

(d) The amount of surety liability should change in accordance with the predicted cost of future closure and stabilization. Factors affecting closure and stabilization cost estimates include: inflation; increases in the amount of disturbed land; changes in engineering plans; closure and stabilization that has already been accomplished and any other conditions af-

fecting costs. This will yield a surety that is at least sufficient at all times to cover the costs of closure of the disposal units that are expected to be used before the next license renewal.

(e) The term of the surety mechanism must be open ended unless it can be demonstrated that another arrangement would provide an equivalent level of assurance. This assurance could be provided with a surety mechanism which is written for a specified period of time (e.g., five years) yet which must be automatically renewed unless the party who issues the surety notifies the Commission and the beneficiary (the site owner) and the principal (the licensee) not less than 90 days prior to the renewal date of its intention not to renew. In such a situation the licensee must submit a replacement surety within 30 days after notification of cancellation. If the licensee fails to provide a replacement surety acceptable to the Commission, the site owner may collect on the original surety.

(f) Proof of forfeiture must not be necessary to collect the surety so that in the event that the licensee could not provide an acceptable replacement surety within the required time, the surety shall be automatically collected prior to its expiration. The conditions described above would have to be clearly stated on any surety instrument which is not open-ended, and must be agreed to by all parties. Liability under the surety mechanism must remain in effect until the closure and stabilization program has been completed and approved by the Commission and the license has been transferred to the site owner.

(g) Financial surety arrangements generally acceptable to the Commission include: surety bonds, cash deposits, certificates of deposits, deposits of government securities, escrow accounts, irrevocable letters or lines of credit, trust funds, and combinations of the above or such other types of arrangements as may be approved by the Commission. However, self-insurance, or any arrangement which essentially constitutes pledging the assets of the licensee, will not satisfy the surety requirement for private sector applicants

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since this provides no additional assurance other than that which already exists through license requirements.

§ 61.63 Financial assurances for institutional controls.

(a) Prior to the issuance of the license, the applicant shall provide for Commission review and approval a copy of a binding arrangement, such as a lease, between the applicant and the disposal site owner that ensures that sufficient funds will be available to cover the costs of monitoring and any required maintenance during the institutional control period. The binding arrangement will be reviewed periodically by the Commission to ensure that changes in inflation, technology and disposal facility operations are reflected in the arrangements.

(b) Subsequent changes to the binding arrangement specified in paragraph (a) of this section relevant to institutional control shall be submitted to the Commission for approval.

Subpart F—Participation by State Governments and Indian Tribes

§ 61.70 Scope.

This subpart describes mechanisms through which the Commission will implement a formal request from a State or tribal government to participate in the review of a license application for a land disposal facility. Nothing in this subpart may be construed to bar the State or tribal governing body from participating in subsequent Commission proceedings concerning the license application as provided under Federal law and regulations.

§ 61.71 State and Tribal government consultation.

Upon request of a State or tribal governing body, the Director shall make available Commission staff to discuss with representatives of the State or tribal governing body information submitted by the applicant, applicable Commission regulations, licensing procedures, potential schedules, and the type and scope of State activities in the license review permitted by law. In addition, staff shall be made available to consult and cooperate with the State or tribal governing body in devel-

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oping proposals for participation in the license review.

§ 61.72 Filing of proposals for State and Tribal participation.

(a) A State or tribal governing body whose interest is affected by a near-surface disposal facility at the proposed site may submit to the Director a proposal for participation in the review of a license application. Proposals must be submitted within the following time periods:

(1) For the State in which the disposal facility will be located, or any State that is member of an interstate compact that includes the State in which the disposal facility is located, no later than 45 days following publication in the FEDERAL REGISTER of the notice of tendering of an application submitted under § 61.20.

(2) For any other State, or for a tribal governing body, no later than 120 days following publication in the FEDERAL REGISTER of the notice of tendering of an application submitted under § 61.20.

(b) Proposals for participation in the licensing process must be made in writing and must be signed by the Governor of the State or the official otherwise provided for by State or tribal law.

(c) At a minimum, proposals must contain each of the following items of information:

(1) A general description of how the State or tribe wishes to participate in the licensing process specifically identifying those issues it wishes to review.

(2) A description of material and information which the State or tribe plans to submit to the Commission for consideration in the licensing process. A tentative schedule referencing steps in the review and calendar dates for planned submittals should be included.

(3) A description of any work that the State or tribe proposes to perform for the Commission in support of the licensing process.

(4) A description of State or tribal plans to facilitate local government and citizen participation.

(5) A preliminary estimate of the types and extent of impacts which the State expects, should a disposal facility be located as proposed.